

1 KAMALA D. HARRIS  
Attorney General of California  
2 ALFREDO TERRAZAS  
Senior Assistant Attorney General  
3 JAMES M. LEDAKIS, State Bar No. 132645  
Supervising Deputy Attorney General  
4 110 West "A" Street, Suite 1100  
San Diego, CA 92101  
5 P.O. Box 85266  
San Diego, CA 92186-5266  
6 Telephone: (619) 645-2105  
Facsimile: (619) 645-2061  
7 *Attorneys for Complainant*

8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2013-628

13 **ERICA LEE BRASH**  
14 **aka ERICA LEE ROJAS**  
15 **239 Winthrop Avenue**  
16 **Elmhurst, Illinois 60126**

**A C C U S A T I O N**

17 **Registered Nurse License No. 588247**

18 Respondent.

19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
22 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
23 Consumer Affairs.

24 2. On or about October 4, 2001, the Board of Registered Nursing issued Registered  
25 Nurse License Number 588247 to Erica Lee Brash, aka Erica Lee Rojas (Respondent). The  
26 Registered Nurse License expired on December 31, 2010.

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## JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

6. Section 2811(b) states:

Each such license not renewed in accordance with this section shall expire but may within a period of eight years thereafter be reinstated upon payment of the biennial renewal fee and penalty fee required by this chapter and upon submission of such proof of the applicant's qualifications as may be required by the board, except that during such eight-year period no examination shall be required as a condition for the reinstatement of any such expired license which has lapsed solely by reason of non-payment of the renewal fee. After the expiration of such eight-year period the board may require as a condition of reinstatement that the applicant pass such examination as it deems necessary to determine his present fitness to resume the practice of professional nursing.

## STATUTORY PROVISIONS

7. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

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1        8.    Section 490 of the Code provides, in pertinent part, that a board may suspend or  
2    revoke a license on the ground that the licensee has been convicted of a crime substantially  
3    related to the qualifications, functions, or duties of the business or profession for which the  
4    license was issued.

5        9.    Section 493 of the Code states:

6            Notwithstanding any other provision of law, in a proceeding conducted by a  
7    board within the department pursuant to law to deny an application for a license or  
8    to suspend or revoke a license or otherwise take disciplinary action against a person  
9    who holds a license, upon the ground that the applicant or the licensee has been  
10   convicted of a crime substantially related to the qualifications, functions, and duties  
11   of the licensee in question, the record of conviction of the crime shall be conclusive  
12   evidence of the fact that the conviction occurred, but only of that fact, and the board  
13   may inquire into the circumstances surrounding the commission of the crime in  
14   order to fix the degree of discipline or to determine if the conviction is substantially  
15   related to the qualifications, functions, and duties of the licensee in question.

16           As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and  
17   'registration.'

18        10.   Section 2761 of the Code states:

19            The board may take disciplinary action against a certified or licensed nurse  
20   or deny an application for a certificate or license for any of the following:

21            (a) Unprofessional conduct, which includes, but is not limited to, the  
22   following:

23            ...

24            (f) Conviction of a felony or of any offense substantially related to the  
25   qualifications, functions, and duties of a registered nurse, in which event the record  
26   of the conviction shall be conclusive evidence thereof.

27            ....

28        11.   Section 2762 of the Code states:

          In addition to other acts constituting unprofessional conduct within the  
         meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a  
         person licensed under this chapter to do any of the following:

          (a) Obtain or possess in violation of law, or prescribe, or except as directed  
         by a licensed physician and surgeon, dentist, or podiatrist, administer to himself or  
         herself, or furnish or administer to another, any controlled substance as defined in  
         Division 10 (commencing with Section 11000) of the Health and Safety Code or  
         any dangerous drug or dangerous device as defined in Section 4022.

          ....

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

12. Business and Professions Code section 4060 states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer . . .

#### REGULATORY PROVISIONS

13. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

14. California Code of Regulations, title 16, section 1445(b), states:

When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation,

1 restitution or any other sanctions lawfully imposed against the licensee.

2 (5) If applicable, evidence of expungement proceedings pursuant to Section  
3 1203.4 of the Penal Code.

4 (6) Evidence, if any, of rehabilitation submitted by the licensee.

#### 5 COST RECOVERY

6 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
7 administrative law judge to direct a licensee found to have committed a violation or violations of  
8 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
9 enforcement of the case.

#### 10 DRUGS

11 16. Acyclovir is used to treat infections caused by herpes viruses. Illnesses caused by  
12 herpes viruses include genital herpes, cold sores, shingles and chicken pox and is a dangerous drug  
13 pursuant to Business and Professions Code section 4022.

14 17. Amitriptyline Hydrochloride, the brand name for Elavil, is a dangerous drug  
15 within the meaning of Business and Professions Code section 4022. Amitriptyline Hydrochloride  
16 is a tricyclic antidepressant and is a dangerous drug pursuant to Business and Professions Code  
17 section 4022.

18 18. Lamotrigine is a prescription medication used to treat seizures in people with  
19 epilepsy. It is also used as a mood stabilizer to treat bipolar disorder and is a dangerous drug  
20 pursuant to Business and Professions Code section 4022.

21 19. Methamphetamine is a Schedule II controlled substance as designated by Health  
22 and Safety Code section 11055(d)(2), and is a dangerous drug pursuant to Business and  
23 Professions Code section 4022.

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**FIRST CAUSE FOR DISCIPLINE**

**(March 27, 2012 Criminal Conviction for Possession of a Controlled Substance –  
Methamphetamine – on August 26, 2011)**

20. Respondent is subject to disciplinary action under Code sections 490 and 2761(f) of the Code in that Respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

21. On or about March 27, 2012, in a criminal proceeding entitled *People of the State of California v. Erica Lee Rojas*, in the Superior Court of California, County of San Diego, Central Division, in Case No. M136048, Respondent was convicted on her plea of guilty of violating Health and Safety Code sections 11377(a) (possession of a controlled substance, to wit: methamphetamine), a misdemeanor pursuant to Penal Code section 17(b)(4).

22. As a result of the above conviction, the Court ordered that Respondent enroll in and complete 30 self-help meetings and remain law abiding for 18 months.

23. The circumstances that led to Respondent's conviction are that on August 26, 2011, at approximately 0130 hours, San Diego Harbor Police Officers were dispatched to the area of 3100 Pacific Highway, San Diego, California, regarding a female in need of a psychiatric evaluation. Upon arrival, officers observed Respondent on the sidewalk next to a vehicle. A male identified as Respondent's husband told officers that Respondent had been under psychiatric evaluation numerous times in the last 10 weeks and that he had filed a missing person's report with San Diego Police Department for Respondent the day before, and had just located her. Respondent's husband further told officers that just prior to the officers' arrival, Respondent had gotten out of his vehicle to look for a "dead puppy in the bushes" and that she had tried to run across Highway 125.

24. Officers took Respondent into protective custody per Welfare and Institutions Code section 5150. While officers looked through Respondent's purse, they found an Illinois driver's license issued to Respondent and two prescription bottles without labels which contained a usable amount of a white, crystalline-like substance in a small plastic baggie, which tested positive for

1 methamphetamine, and numerous prescription pills without a prescription, including  
2 Amitriptyline Hydrochloride, Lamotrigine and Acyclovir. Officers transported Respondent to  
3 County Mental Health for evaluation and the doctor on duty cleared Respondent to be booked at  
4 the Las Colinas Detention Facility where she was booked for possession of methamphetamine  
5 and possession of prescription pills without a prescription.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct – Obtain or Possess Controlled Substances)**

8 25. Respondent is subject to disciplinary action under Code section 2761, subdivision (a),  
9 on the grounds of unprofessional conduct as defined by Code section 2762, subdivision (a), in  
10 that on or about August 26, 2011, she possessed controlled substances not prescribed to her, as set  
11 forth in paragraphs 20-24, above, which are incorporated here by reference.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct – Conviction of a Drug Related Crime)**

14 26. Respondent is subject to disciplinary action under Code section 2761, subdivision (a),  
15 on the grounds of unprofessional conduct as defined by Code section 2762, subdivision (c), in  
16 that on or about March 27, 2012, she was convicted of a criminal offense involving the  
17 possession of a controlled substance, as set forth in paragraph 20-24, above, which are  
18 incorporated here by reference.

19 **PRAYER**

20 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
21 and that following the hearing, the Board of Registered Nursing issue a decision:

22 1. Revoking or suspending Registered Nurse License Number 588247 issued to Erica  
23 Lee Brash, aka Erica Lee Rojas;

24 2. Ordering Erica Lee Brash, aka Erica Lee Rojas, to pay the Board of Registered  
25 Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to  
26 Business and Professions Code section 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED: February 19, 2013 for Janie Bern

LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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